



VIRGINIA CRIMINAL SENTENCING COMMISSION



Virginia Criminal Sentencing Commission

**Presentation to the
Senate Finance Public Safety Subcommittee**

January 16, 2015

Activities in 2014

- **Monitoring and oversight of Virginia's Sentencing Guidelines system**
- **Training, education and other assistance related to the preparation and use of Sentencing Guidelines**
- **Projecting the impact of proposed legislation (§ 30-19.1:4)**
- **Assisting the Secretary of Public Safety and Homeland Security with the prison and jail population forecasting process**
- **Providing technical assistance to other agencies as requested**



Activities in 2014

- **Developing online application for automating Sentencing Guidelines (within existing budget)**
- **Administering the Immediate Sanction Probation pilot project**
- **Initiating a study of felony larceny offenses (including amount/value of theft)**
- **Examining Virginia's experience under no-parole/truth-in-sentencing during the last 20 years**



Virginia's Sentencing Reform Legislation (1994)

Adopted during a Special Session of the General Assembly, the sentencing reform provisions took effect for felonies committed on or after January 1, 1995



Goals of Sentencing Reform:

Abolish parole

Establish truth-in-sentencing
(minimum 85% time served)

Target violent felons for longer
terms of incarceration

Redirect prison-bound low-risk
offenders to less costly sanctions

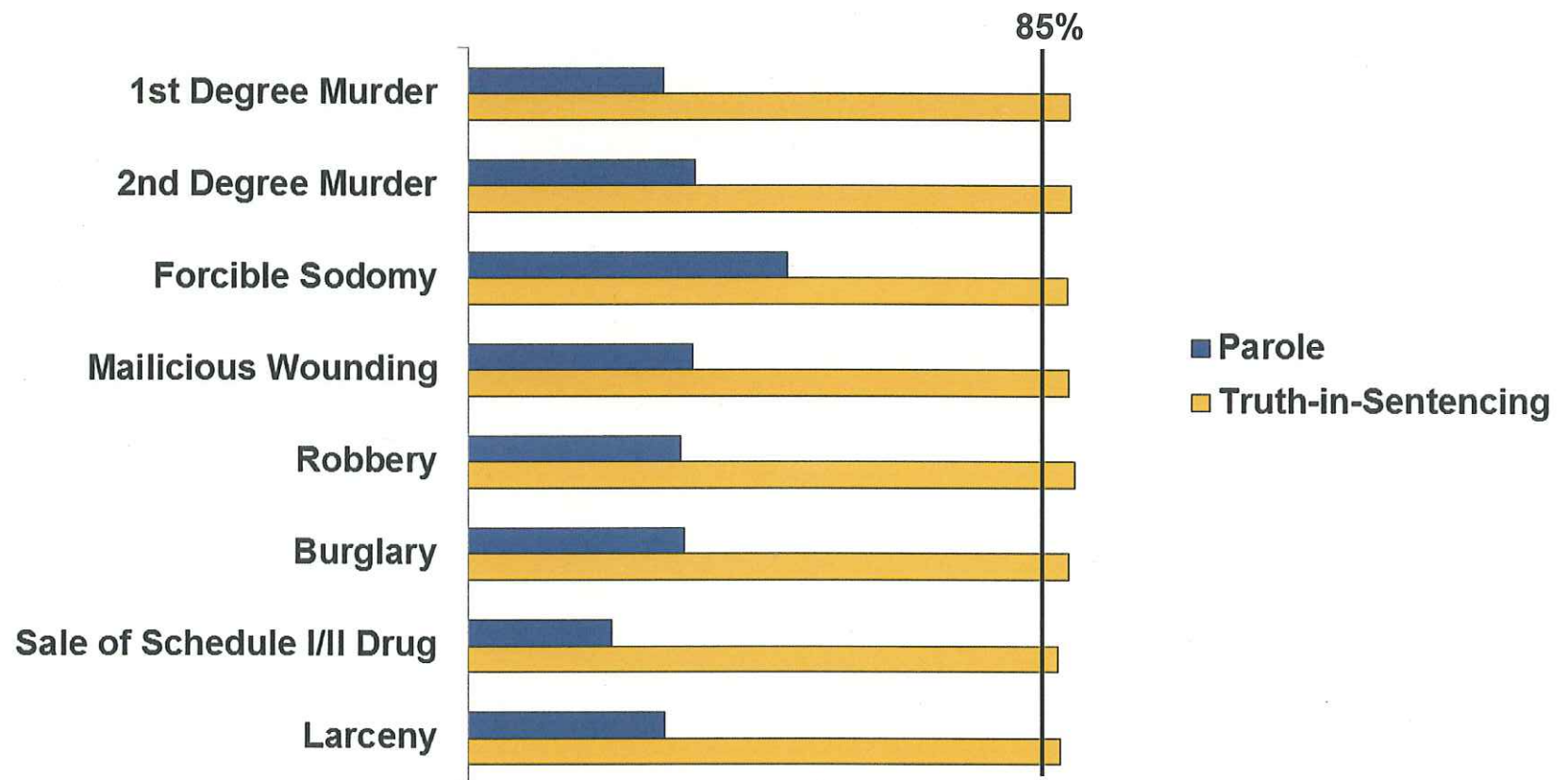
Expand alternative punishment
options for some nonviolent felons

Reduce sentencing disparities

Create a sentencing commission to
oversee a voluntary sentencing
guidelines system

Under truth-in-sentencing, felons are serving at least 85% of the sentence ordered by the court.

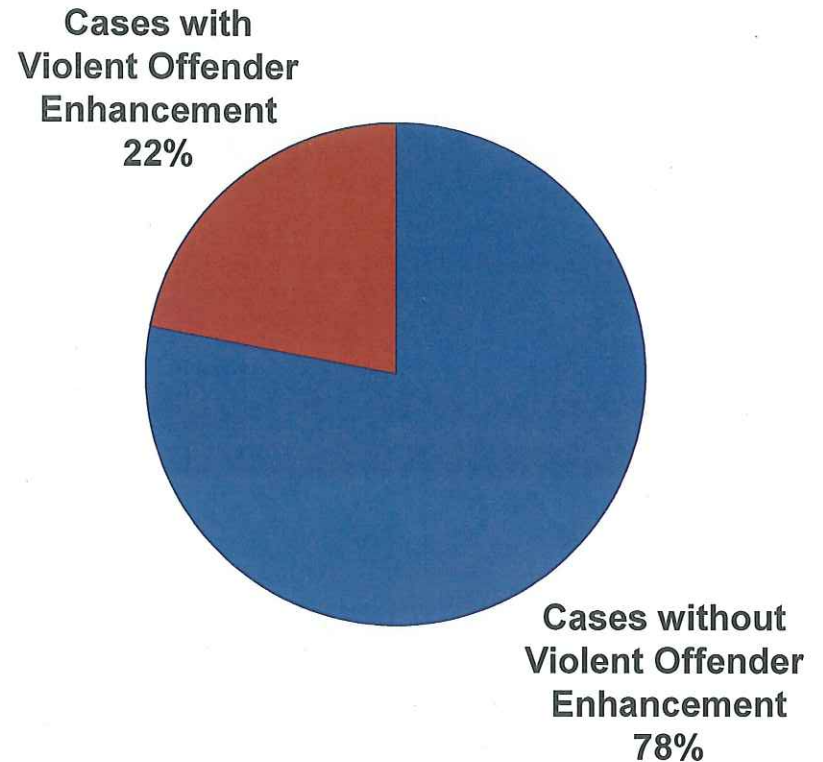
Percentage of Prison Sentence Served



Parole system data represent FY1993 prison releases; truth-in-sentencing data is derived from the rate of sentence credits earned among prison inmates as of December 31, 2013

Guidelines Midpoint Enhancements for Violent Offenders (as defined in § 17.1-805)

- Midpoint enhancements produce sentence recommendations for violent offenders that are significantly longer than the time served by these offenders prior to the enactment of truth-in-sentencing laws
- Offenders who are convicted of a violent crime, or who have been previously convicted of a violent crime, receive these enhancements



FY2014

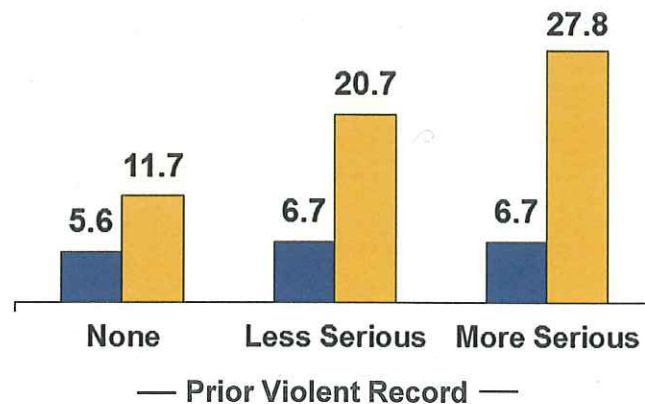
Number of Cases = 25,428



Violent offenders, and particularly repeat violent offenders, are serving significantly longer under truth-in-sentencing.

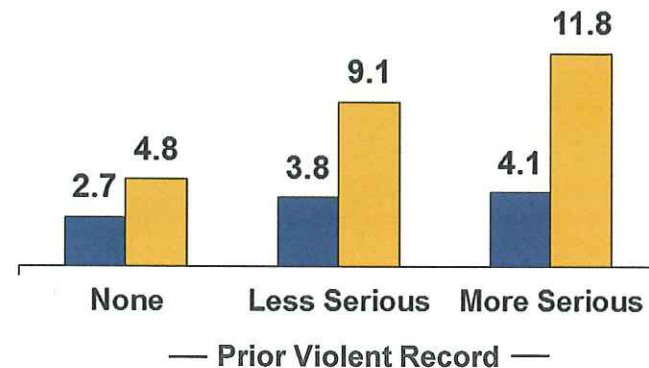
Forcible Rape

Prison Time Served (in years)



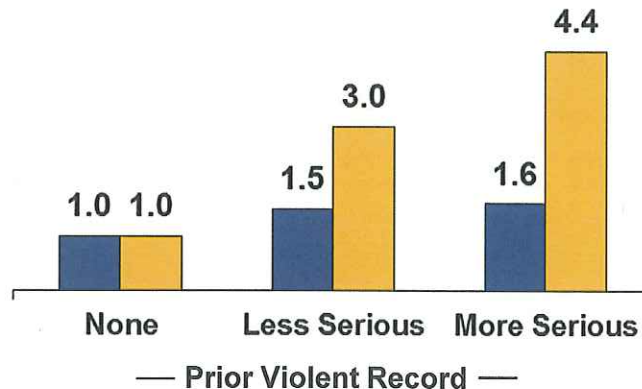
Robbery with Firearm

Prison Time Served (in years)



Sale of a Schedule I/II Drug

Prison Time Served (in years)



■ Parole System ■ Truth-in-Sentencing

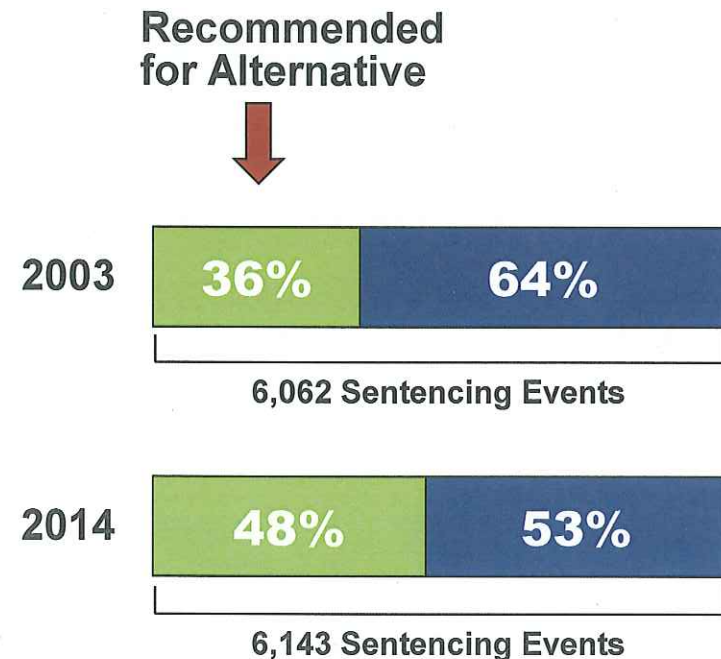
These figures present values of actual incarceration time served under parole laws from 1988 through 1992 and expected time to be served under truth-in-sentencing provisions for cases sentenced FY2010 through FY2014. Time served values are represented by the median (the middle value, where half the time served values are higher and half are lower). Truth-in-sentencing data include only cases recommended for, and sentenced to, incarceration of more than six months.

Each year, roughly 3,000 low-risk drug and property offenders are recommended for alternative sanctions in lieu of traditional incarceration in prison or jail.

■ In 1994, the General Assembly directed the newly-created Sentencing Commission to:

- Develop an empirically-based risk assessment instrument, and
- Apply the instrument to nonviolent felons recommended for prison, with a goal of placing 25% in alternative sanctions.

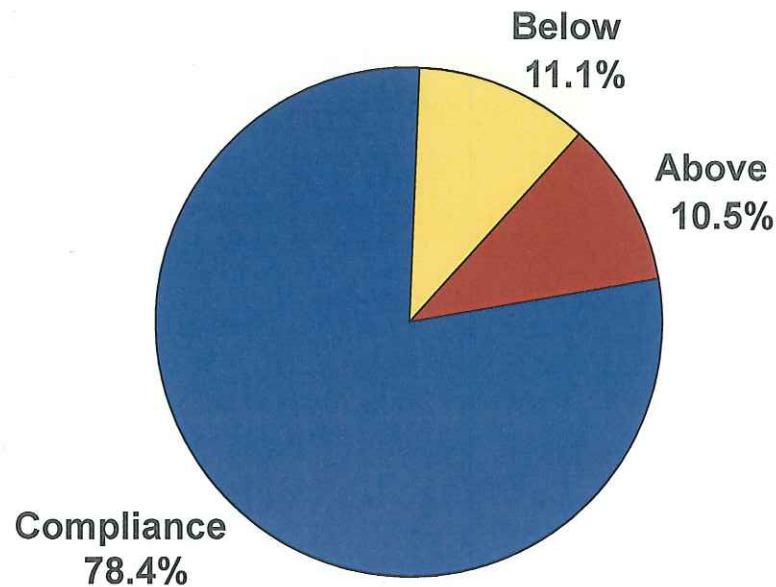
➔ Implemented statewide in 2002



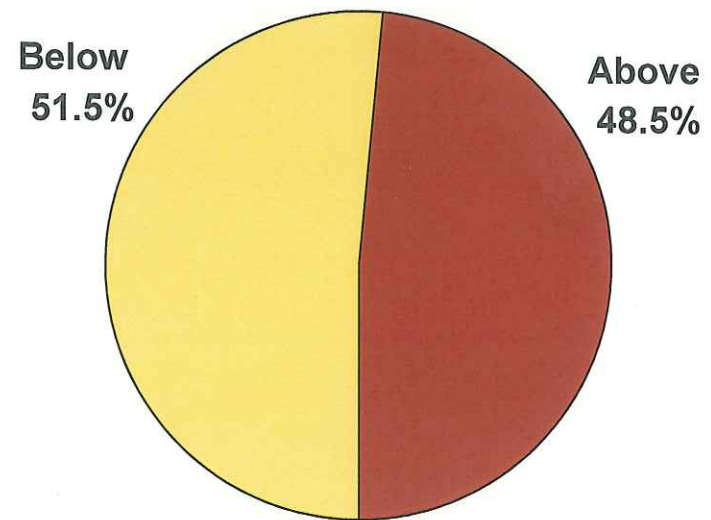
Analysis is based on offenders recommended by the sentencing guidelines for prison or jail incarceration.

Circuit court judges comply with the sentencing guidelines at a high rate overall.

Overall Compliance



Direction of Departures



FY2014

Number of Cases = 25,428

Of the state's 31 circuits, 11 circuits had compliance rates of 80% or higher, while 16 circuits had compliance rates between 75% and 79%. The remaining 4 circuits had compliance rates below 75%.

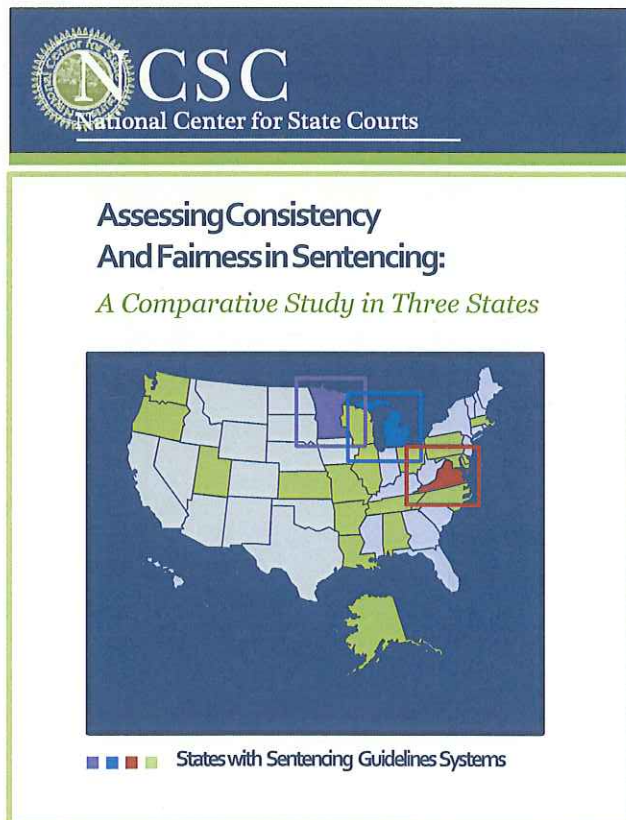
Research suggests that unwarranted sentencing disparities have been reduced.

Findings

Guidelines effectively limit undesirable sentencing disparity by reducing the role of factors that should not play a role in the sentencing decision.

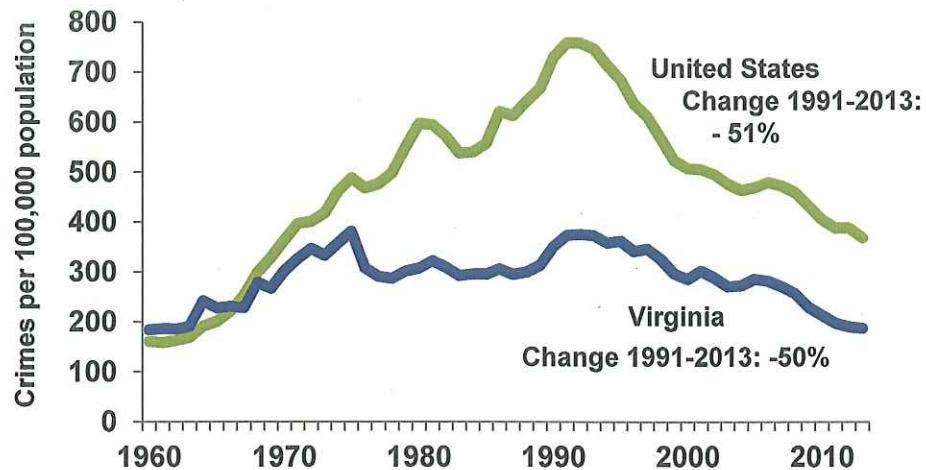
There is no evidence of a direct relationship between the voluntary/mandatory nature of state guidelines and undesirable racial, gender, age, or geographical disparities.

Virginia showed no substantively significant discrimination in sentencing outcomes.

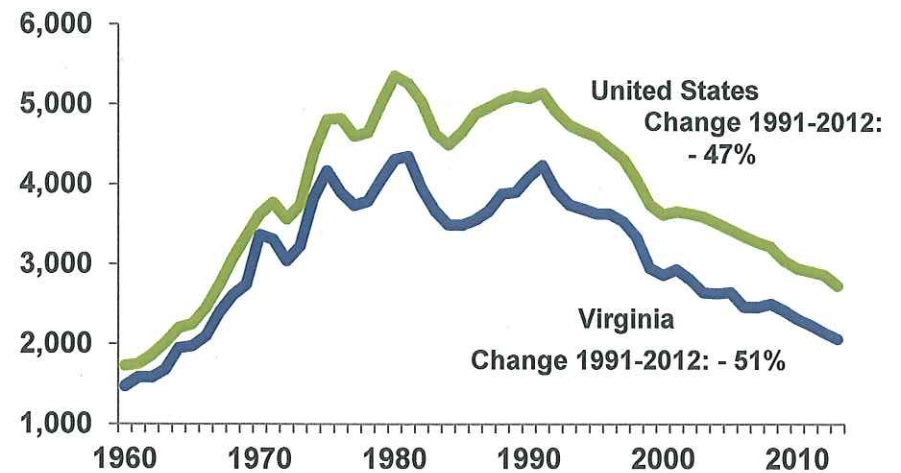


Virginia's crime rates have been declining and Virginia has improved in its ranking relative to other states.

Violent Crime Rate



Property Crime Rate

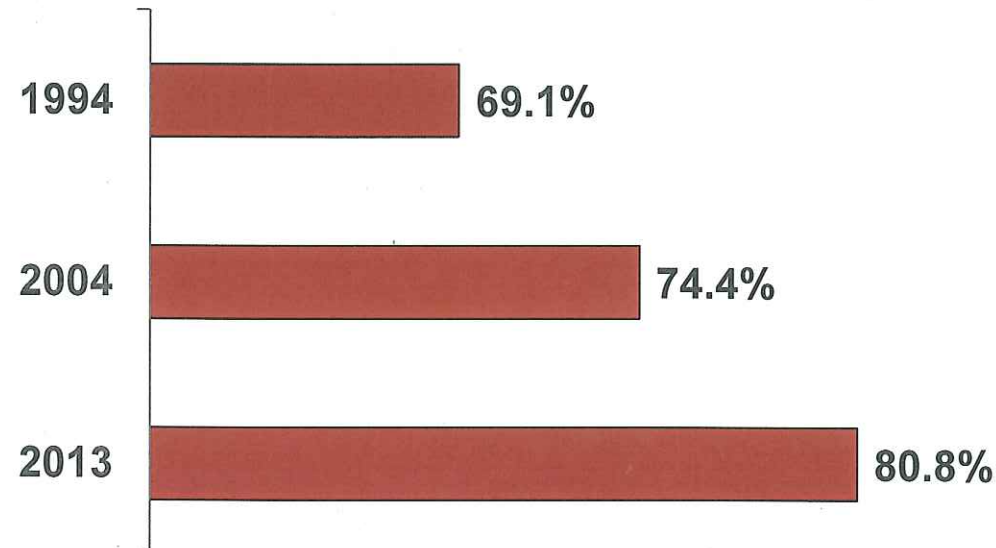


Year	Virginia's Violent Crime Ranking
1994	14 th lowest
2004	14 th lowest
2013	3 rd lowest

Year	Virginia's Property Crime Ranking
1994	11 th lowest
2004	13 th lowest
2013	8 th lowest

Today, a larger share of expensive prison beds are occupied by violent felons.

**Percent of State Inmate Population
Who are Violent Felons***



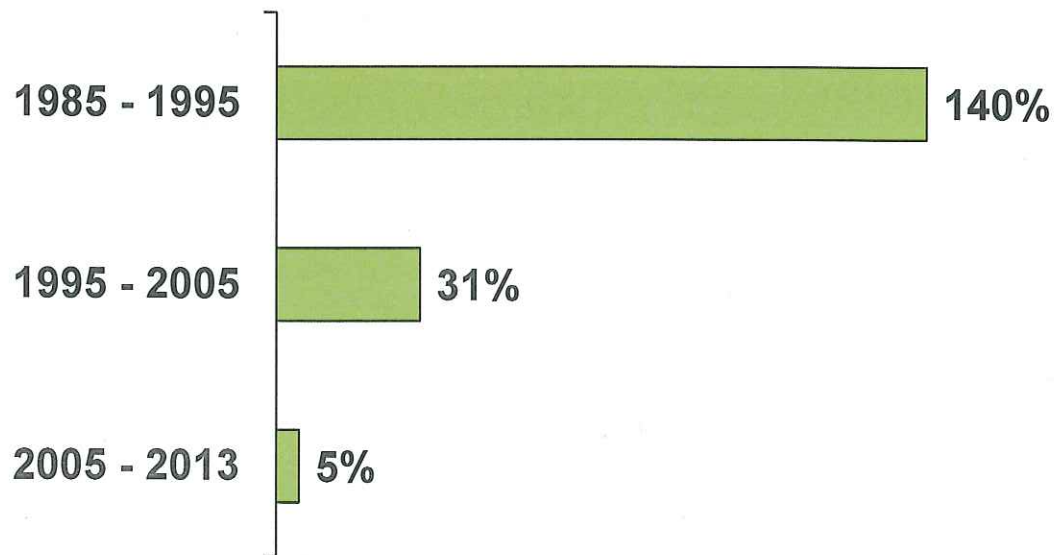
*** As defined in § 17.1-805**



Source: Virginia Criminal Sentencing Commission, 2014 Annual Report

Virginia's prison population growth has slowed since 1995.

Inmate Population Growth
in Virginia



Source: Virginia Criminal Sentencing Commission, 2014 Annual Report



Immediate Sanction Probation Pilot Program

Directive for Immediate Sanction Probation Pilot Program

- **In 2012, the General Assembly directed the Sentencing Commission to implement an Immediate Sanction Probation program in up to 4 pilot sites.**
- **The pilot program is modeled after Hawaii's Opportunity Probation with Enforcement (HOPE) program (established in 2004).**
 - **A rigorous evaluation of HOPE found a significant reduction in technical violations and drug use among participants, lower recidivism rates, and reduced use of prison beds.**



Focus of Immediate Sanction Probation

- Focus is on offenders at-risk for recidivating and/or failing probation.
- The goal is to improve compliance with the conditions of probation and reduce the likelihood of new criminal offenses by applying swift and certain, but moderate, sanctions for each violation.

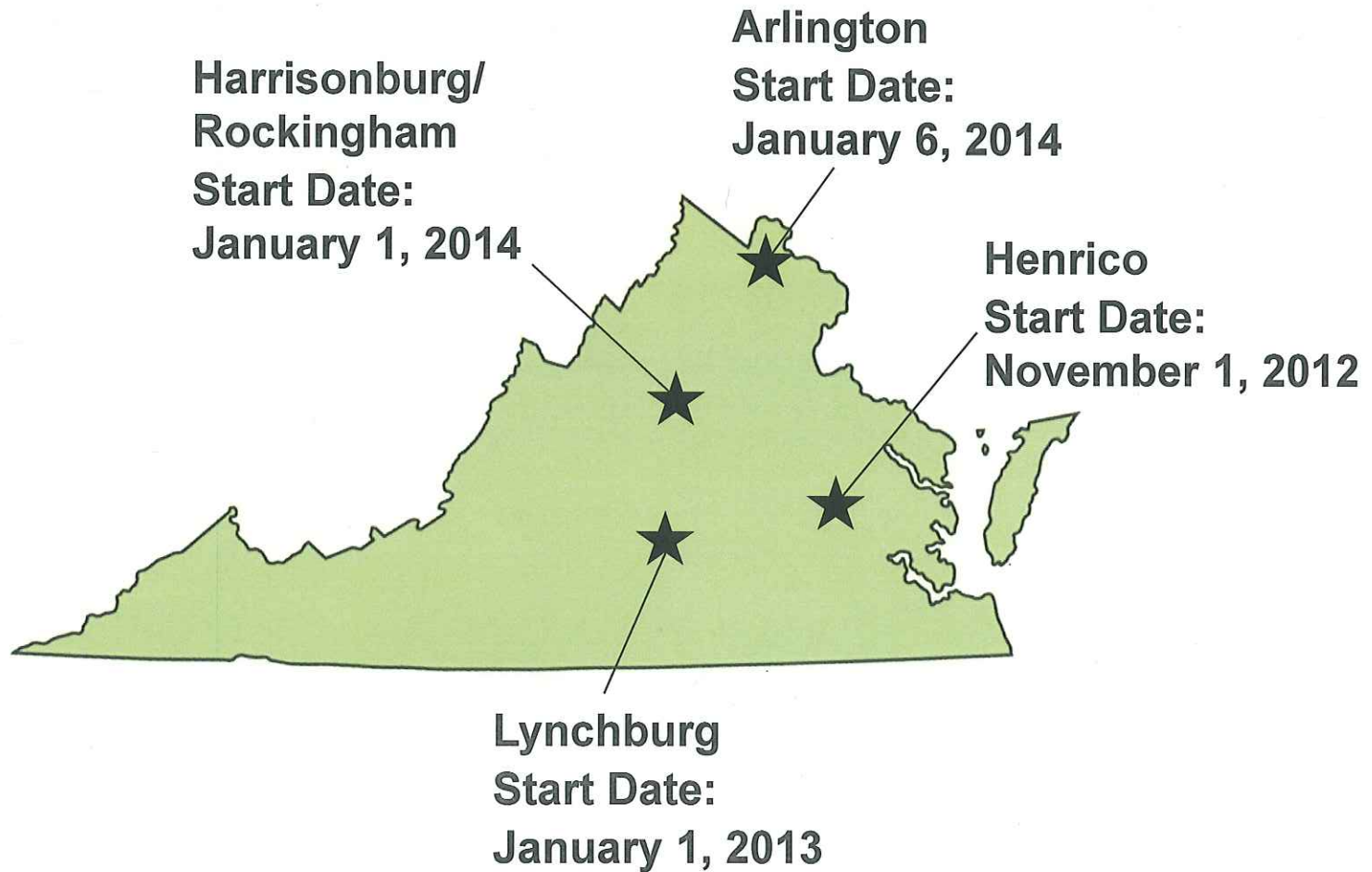


Key Elements of Virginia's Pilot Program

- When placed in the program, the offender is warned that probation terms will be strictly enforced.
- Participants undergo frequent, unannounced drug testing.
- Participants who violate the terms of probation are immediately arrested.
- The court establishes an expedited process for dealing with violations, usually in 1-3 days.
- For each violation, the judge orders a short jail term.
- If drug or alcohol addicted, the participant may be required to complete substance abuse treatment.



Immediate Sanction Probation Pilot Sites



Change in Appropriation Act Language

- The 2012 General Assembly adopted budget language to extend the provisions of § 19.2-303.5, which was set to expire on July 1, 2012.
 - The provision was extended until July 1, 2014.
 - This statute provides the legal parameters and basic framework for the Immediate Sanction Probation program.
- In 2014, the Sentencing Commission requested an extension (to July 1, 2015) to allow Arlington and Harrisonburg/Rockingham sufficient time to test the program.
 - Approved by General Assembly in Appropriations Act



Activity in the Pilot Sites as of November 18, 2014

	Henrico (start 11/1/12)	Lynchburg (start 1/1/13)	Harrisonburg Rockingham (start 1/1/14)	Arlington (start 1/6/14)	Total
Offenders placed in the program	47	47	37	11	142
Participants who have violated	35	22	24	4	85
Number of Violations	85	46	57	7	195
Participants removed	18	7	6	0	31
Current Participants	25	26	31	11	93
Number of Completions	4	14	0	0	18



Successes

- The stakeholders in each pilot site have successfully developed and implemented new processes to respond to violations very quickly.
- Observable behavioral and lifestyle changes appear to have occurred in high-risk probationers (e.g., some probationers are experiencing the longest period of sobriety and noninvolvement in criminal behavior of their adult life outside of incarceration, actively participating in/taking advantage of treatment).
- This may result in the diversion of offenders away from lengthy jail or prison sentences, which they may otherwise receive for either continued probation violations or new offenses.



Challenges

- While there has been considerable interest in the swift-and-certain sanctions model, finding localities willing to participate as pilot sites took time.
 - The pilot project is being implemented within existing agency budgets and local resources.
- In participating pilot sites, existing local and state resources have been stretched thin.
- Substance abuse and mental health treatment options are not uniformly and consistently available across the pilot sites.
- There is no way to ensure that all eligible candidates are referred to the court for program consideration.



Next Steps

- Enabling legislation for the program is set to expire on July 1, 2015.
- In the coming months, Sentencing Commission staff will continue to assist stakeholders in the four pilot sites with program operations.
- The evaluation phase will begin latter this year.
 - Report due to the General Assembly in 2016.





Recommendations in the Sentencing Commission's 2014 Annual Report

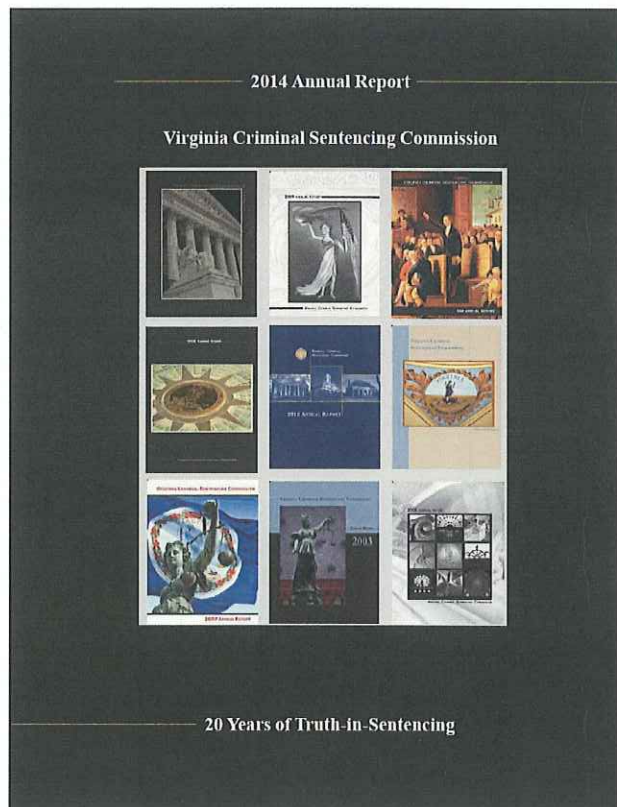
Revisions to Sentencing Guidelines § 17.1-806

Modifications recommended by the Commission must be presented in an annual report and submitted to the Governor, Chief Justice, and the Legislature each December 1.

Legislative session provides opportunity for lawmakers to accept or reject the Commission's recommendations.

The recommendations, unless otherwise provided by law, become effective the following July 1 (§ 17.1-806).

**The 2014 Annual Report is available at:
www.vcsc.virginia.gov**



About the Commission's Recommendations

- The sentencing guidelines are based on analysis of actual sentencing practices and are designed to provide judges with a benchmark that represents the typical (average) case.
- Recommendations for revisions to the guidelines are based on the best fit of the available data.
- Recommendations are designed to closely match the rate at which judges sentence offenders to prison and jail.

No impact on correctional bed space is anticipated, since the Commission's recommendations are based on analysis of current sanctioning practices.

2014 Recommendations

RECOMMENDATION

1

Add distribution, sale, etc., of a Schedule IV controlled substance (§ 18.2-248(E2)) to the Drug/Other guidelines

RECOMMENDATION

2

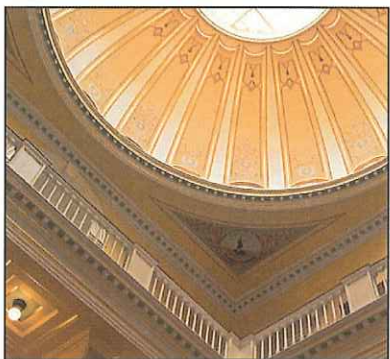
Add obtaining identifying information with the intent to defraud, second or subsequent offense (§ 18.2-186.3(D)) to the Fraud guidelines

RECOMMENDATION

3

Add receiving a stolen credit card or credit card number with the intent to use or sell (§ 18.2-192(1,b)) to the Fraud guidelines





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